STATE OF NEW-YORK.

No. 25.

IN SENATE,

February 6, 1845.

MESSAGE

From the Governor, transmitting a memorial from the Pilots of New-York.

EXECUTIVE CHAMBER,
Albany, Feb. 3, 1845.

TO THE LEGISLATURE.

I herewith transmit a memorial from the pilots of New-York, which has been placed in my hands by a committee from the body of the pilots, with a request that I would cause it to be laid before the Legislature, and invoke its consideration of the subject of it. I deem it but just to that class of public commercial agents to comply with their request.

Without entering upon the discussion of the question, as to how far the Constitution of the United States has made the regulation of pilots and pilotage one of Federal, or of State jurisdiction, it is sufficient for my purpose to remark, that the only action of Congress, upon the subject, from the establishment of the Federal Government up to the year 1837, was, by a law passed on the 7th day of August, 1789, to refer the whole matter to the legislation of the States, until its further action.

The loss of a couple of vessels, with numerous lives, in or near

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the harbor of New-York, during the early part of the winter of 1836–7, gave rise to many and aggravated charges of negligence and abuse against the New-York pilots, and an application was made to Congress to interfere, by what was claimed to be its proper constitutional authority, and break up what was charged as a monopoly enjoyed by those pilots, under the then existing State law, leading to the negligence and abuses complained of.

Congress did interfere, and, on the third day of March, 1837, passed a law declaring that "it shall and may be lawful for the master and commander of any vessel coming into or going out of any port situated upon waters which are the boundary between two States, to employ any pilot duly licensed or authorized by the laws of either of the States bounded by said waters, to pilot any vessel to or from said port, any law, usage, or custom to the contrary notwithstanding."

Long before the establishment of the Federal Government, the State of New-York, as a Colony, and as a State, had made the pilotage of the port of New-York, a subject of legislative regulation, and after that time up to the passage by Congress of the act of 1837, before referred to, it had been subject, and only subject, to its exclusive legislation. This, with the extensive, and constantly increasing commerce of that port, had naturally raised up a body of pilots, who made piloting vessels into and out of that port their profession or calling, and who depended upon that business for the support of themselves and their families. The rigid provisions in reference to their qualifications and skill, which had, for a long term of years, characterized our legislation upon the subject, had made it a profession difficult and expensive in the acquirement, and it was the policy of those laws to give it commensurate value, by confining the business, as in other professions, to pilots duly and legally licensed. I believe I may say, that as a body of men, during all this period, the pilots of the port of New-York, would bear a favorable comparison with the pilots of any other port in the Union, or in the world, whether as to their fidelity and skill as pilots, or their patriotism or respectability as citizens.

The unfortunate loss of the vessels referred to, at New-York, in 1836–7, produced great excitement throughout the country, and the blame was charged upon the pilots of that port. It was charged that

the monopoly they enjoyed of the business of piloting vessels, had made them negligent and indifferent, and that the pilot stations were not properly or faithfully supplied, during the inclement and dangerous seasons of the year.

Acting under the impression that these charges were justly made against the pilots, as is believed, Congress passed the law of 1837, which has been quoted, having for its object to introduce competition from the adjoining State of New Jersey, to break up the supposed injurious monopoly, and to secure vigilance on the part of the pilots.

It cannot fail to be seen that this legislation on the part of Congress, was very partial in its application, only affecting the pilots of those ports and harbors, the waters of which embraced a boundary between States. No portion of the pilots of many entire States were at all affected by it, and only those employed at particular ports, in any State. This mode of exercising a federal power, within the limits of the Constitution, has been broadly questioned. The power, if it be federal, is universal and equal over the whole Union, and if put in exercise at all, it may well be questioned whether that exercise should not also be universal and equal. The latitude of a harbor, the depth of its water, or the number of its islands, might, it appears to me, be made the rule of application, with as much show of principle, as the fact that a boundary between States passes through it.

So also the principle, that Congress can make a law of one State operate in another, or give to a license, granted by the authority of one State, force in another, appears to me to be equally unsound and dangerous. It is assuming that Congress may, as a mode of exercising a federal power, adopt the legislation, existing or prospective, of the States, and give to it federal extension and supremacy, instead of legislating itself to carry the power into effect. These objections appear to me to exist against the law of Congress of 1837, without questioning the full power of Congress to legislate itself as to the whole subject of pilots and pilotage, a power the existence of which it is not my purpose to admit or deny, upon this occasion.

The same casualties which awakened the attention of Congress to this subject, also excited the legislation of the State to investigation and action upon the same subject.

The result of the investigation instituted was to show, as I believe, to the satisfaction of all, and to produce the universal admission, that the charges against the New-York pilots were wholly unfounded, and that the loss of the vessels was in no way attributable to any negligence or fault on their part. This disposed of the ground upon which Congress was, undoubtedly, induced to attempt this partial exercise of its authority over the subject of pilotage.

The State legislation consequent upon this excitement of feeling, was an entire new law for the licensing and government of the pilots of the port of New-York, which was passed on the 12th day of April, 1837, but little more than a month after the passage of the law of Congress of that year. This law opened materially the regulations for licensing pilots, and increased the restraints and responsibilities upon those who should take a license, and enter upon the business; while the monopolizing features of the former laws were entirely removed, and the fullest competition opened and invited between the pilots attached to every different pilot boat. The terms of apprenticeship necessary to entitle the apprentice to a license were materially shortened, and at the discretion of the commission constituted, persons who had served no apprenticeship could be licensed upon examination. Every pilot's license was to be renewed annually; every pilot was to give a bond with sureties, to be forfeited and paid, in case his carelessness, or want of skill, should damage the vessel or property entrusted to his care, and rigid provisions were enacted for the constant occupation and supply of the pilot stations, in which every boat was to take its regular turn. Other provisions of a rigid and onerous character upon the New-York pilots, are also found throughout this law, and the charges for piloting every vessel in or out of the port are specifically fixed.

The pilots cheerfully accepted of the terms, and energetically entered upon their difficult and dangerous duties under the new law, and soon found others—strangers to them, to the law of their State, and free from its restrictions and responsibilities—acting as their competitors. If they attempted to enforce against these competitors the prohibitions of the law of the State, the act of Congress of 1837, and a license from a neighboring State, were interposed, and proved to be effectual exemptions before the municipal courts. In this way, pilots

who were under no obligation to supply the pilot stations, had given no bond, had served no apprenticeship, had undergone no examination, and restrained by no legal regulation of charges, were found to occupy a position of equality with them, at their own docks and in their own harbor.

Nor were they, as a universal, or even a general rule, citizens or inhabitants of another State, but residents of the same city with themselves, who having taken a license from another State, were entirely at liberty to be pilots in fair weather, and landsmen in foul, if that should be their pleasure—entirely at liberty to follow the profession of pilots during those portions of the year when the hazards are least and commerce is most full, and to leave the stations to the regularly licensed pilots of the State, at all other times, in case they should find that course most pleasant or profitable.

Such has continued to be the state of things, since the passage of the act of Congress of 1837, and the State law of the same year; and it appears to me, that under regulations so unequal, the New-York pilots have just cause for complaint. They claim that either the law of Congress should be repealed, and all the pilots of the port subjected alike to the provisions and restrictions of the State law, or that the restrictions of the State law should be removed from them, and they left, like the pilots who carry the licenses of other States, under the simple enactment of the law of Congress. To my mind this demand seems to be just, and I know of no body to which our own pilots can so properly appeal to do them this justice, as to the legislation of their own State.

The New-York pilots have, for years, applied in vain to Congress to repeal its law, and now they come to their own Legislature and ask of it to lend them its weight in the renewal of that application, or to so modify its own legislation as to place them upon an equality with others, under the law of Congress. My own impression is, that if the Legislature should consider it wise and proper to invoke the attention of Congress to the inequality and injustice caused by the law of 1837, and to the dangers to the commerce of the port of New-York of a repeal of the State law, and an abandonment of all the pilots of the port to the loose and indefinite regulations of the act of Congress, the consequence would be a repeal of that act, leaving again the whole subject to the regulation of the Legislature of the State, where,

for about half a century after the adoption of the Federal Constitution, it so safely reposed. In any event, I think the petitioners entitled to the careful attention of the Legislature, and respectfully request that attention for them.

The memorial is accompanied by an argument of the questions of principle, which the petitioners suppose to be involved in their application, and I take leave to present it to the Legislature, with their petition.

SILAS WRIGHT.

MEMORIAL.

In presenting the annexed memorial, the pilots of New-York submit the following considerations to the Legislature, expecting to establish that the act of Congress of the 4th of March, 1837, is a manifest infraction of the federal compact, impairing, if not effectually undermining, the sovereignty of the States.

The course of legislation by the Federal and State Governments has placed this subject in a condition of confusion and disorganization wholly incompatible with the importance of it.

The power of the Federal Government to legislate arises from the exclusive grant in the Constitution that Congress shall "regulate commerce with foreign nations, and among the several States, and with the Indian tribes."

The States exercise the same power of legislation under their acknowledged rights to regulate their police, their domestic trade, and to govern their own citizens.

It would therefore appear that the government of pilots is one of those subjects over which the United States and the individual States must, of necessity, exercise concurrent or co-ordinate jurisdiction. The States under our political system may exercise their imperfect right until it comes practically in collision with the actual exercise of the same congressional power. As soon as such collision occurs, the right of the State, being subordinate to that of Congress, must be surrendered, and yield to the more absolute power, under the 6th article of the Constitution of the United States. "This Constitution, *and the laws of the United States which shall be made in pursuance thereof*, and all treaties made, or which shall be made under the authority of the United States, *shall be the supreme law of the land.*"

It is well known, that under the confederation, the regulation of commerce was committed to the respective States, each for itself; and in the exercise of it, and the acknowledged rights of sovereignty, the States respectively, as necessity required, adopted a pilot system coextensive with their territorial limits, and on the high seas.

At the first session of Congress, begun and held at the city of New-York, on Monday, the 4th of March, 1789, (the first day the Consti-

tution commenced its operation,) Congress was employed in filling out, by legislation, the distributed grants, which became the subjects of its jurisdiction, and on the 7th of August following, passed an act adopting the pilot systems of the several States in the Union, in general terms—"That all pilots in the bays, rivers, inlets, harbors, and ports of the United States, shall continue to be regulated in conformity with the existing laws of the States respectively, *wherein such pilots may be*, or with such laws as the States may respectively hereafter enact for the purpose, until future legislative provision by Congress." By that act the laws of the States were engrafted on the legislative code of the Federal Government for the regulation of pilots, and in virtue of the *prospective* authority of that act, the State of New-York continued to legislate on the subject until as recently as the 12th of April, 1838; without interruption, until the 4th of March, 1837—a period of about fifty years.

The disasters during the winter of 1837, suggested to Congress the necessity of providing more adequate laws, to prevent the recurrence of similar misadventures. To accomplish that object, on the 4th of March an act was passed, consisting of a single section, in the following words: "An act concerning pilots. Be it enacted, that it *shall and may be lawful* for the master or commander of any vessel coming into or *going out* of any port situate upon waters which are the boundary between two States, to employ any pilot duly licensed or authorized by the laws of either of the States bounded on the said waters to pilot any vessel to or from said port, any law, usage or custom to the contrary notwithstanding." In the exercise of the sovereign political power of this State, laws have been enacted for the licensing and government of pilots of the port of New-York, requiring those appointed, not alone to possess suitable qualification, but to furnish sufficient security for the faithful discharge of their appropriate duties; likewise visiting delinquency and misconduct with pains and penalties. Confiding in the protection implicitly guarantied, on the faith of this State, they invested their fortunes in the purchase, building and equipment of vessels necessary for the efficient execution of their office, when precipitate legislation opened the enjoyment of the exclusive privileges conferred on them, to the citizens of an adjoining State, *to be exercised within the territorial confines of their own.* It is not that Congress has legislated within its appropriate sphere, that they complain, but that in such legislation its constitutional authority has been transcended, and the sovereignty of their State has been invaded to their exclusive prejudice.

It is admitted that the regulation of commerce includes that of navigation, and that the authority of Congress, though limited to specified objects, is plenary as to those objects; but it is denied that the sovereignty of Congress permits an invasion of the sovereignty of a State, in matters known and acknowledged to pertain to State sovereignty. Had Congress assumed the task of regulating the pilot system in all its branches; had it conferred on the Executive of the Federal Government, the appointment of pilots, and assigned to those thus appointed the limits within which to exercise their func-

tions, your memorialists would have been sensible that such regulation was in the exercise of a constitutional power; but finding that under the excitement of local prejudice, Congress has overstepped constitutional bounds, and delegated to a sister State *the right of appointing municipal officers to perform their functions within the territorial limits of this* State, they claim the restraint of such authority, and that the integrity of the State be asserted against such infringement of its sovereign rights. The Federal Government has full power to appoint *its own* officers to discharge their duties every where, but has none to authorize the exercise of the municipal jurisdiction of our sovereign State within the confines of another, and thus perpetrate consolidation in its most hideous deformity.

It is a well settled proposition "that the Federal Government can do no act on the navigable waters within the limits of the United States, which, or a corresponding act to which, it cannot do on land within the same limits." If therefore, the navigable waters belong no more to the Federal Government, and are not otherwise affected by the union than the land itself, and the act of 1837 is within the scope of federal legislation, in authorizing the municipal officers of the State of New-Jersey to discharge their duties on the waters of the State of New-York, it may with equal propriety authorize the former State, or indeed any member of the Union, to appoint officers indiscriminately to perform the duties of their office on land, within the same limits. That doctrine is wholly repugnant to the idea of sovereignty. Such control deriving validity from a sovereign power necessarily implies a diminution of the sovereignty of New-York, to the extent of that control, and an investment of that sovereignty in the State of New-Jersey, to the same extent as that control is imposed. The jurisdiction of a State within its own territory is *exclusive* and *absolute* and is susceptible of no limitation not imposed by itself. In adopting the Federal Constitution, the States invested Congress with the power to regulate commerce, but did not contemplate that Congress *should delegate that right* (as in the present act exercised) by authorizing one State to license officers to perform the duties of their appointment within the territory of another.

The Congress of 1789 was in part composed of those illustrious statesmen who framed the Constitution, and the act of that date may be regarded as a contemporaneous legislative exposition of that instrument. That Congress well understood the limit of Federal and State sovereignty; and moving with caution and circumspection, did not venture to trench on State sovereignty, but "exabundentia cautela" avoided it, and limited the laws of the respective States to the pilots of the respective States, the act declaring "That all pilots, &c. &c., shall continue to be regulated in conformity with the existing laws of the States respectively *wherein such pilots may be.*"

Though the terms of the act of 1837, invests *masters* of vessels with authority to employ certain pilots, yet the aim, object and spirit of it is to confer the power in the *pilots* to *act* rather than on the masters to *employ* them, as is sufficiently expressed by the title of the single section act. It is "An act concerning pilots." Nor is it an

act for the regulation and government of pilots, but designed to extend the field of operation, heretofore denied to the citizens of the State of New-Jersey, by conferring on them, in common with the pilots of New-York, the right of piloting vessels on the exclusive waters of this State; for exclusive the waters are, as regards the municipal relations of this State; of exercising the sovereignty of New-Jersey within the State of New-York, their only power to act, springing from the commission of that State; that commission being an essential portion of the sovereignty of the State that grants it, proceeding from such sovereign power, and following those in whom it is invested beyond the confines of such sovereignty. The expression in the act "that it may be lawful by obvious legal intendment is, that it was unlawful before, or is a grant of power not before possessed, as, if it were lawful before the act of 1837, the legislative declaration to that effect was wholly superfluous. The act of 1837 accomplishes two purposes. First, it deprives the State of New-York of the exclustve authority to appoint pilots for her own waters; and second, authorizes the State of New-Jersey to participate equally in that right, notwithstanding the supreme court of the United States has adjudged that the licensing of pilots is embraced in the power of a State to regulate her police, her domestic trade and the government of her own citizens. That it was unlawful before that act, for the pilots of New-Jersey to perform their functions in the waters of New-York, is a notorious fact, well understood by the citizens of New-Jersey, as well as New-York; so well understood by the former, that it has never before been seriously claimed. All the right arises under the act of 1837, and is now enjoyed in most successful activity—a right to do that which was before prohibited, and cautiously guarded against by the act of 1789—a right to invade the sovereignty of this State—a right to New-Jersey to employ her citizens without the concurrence or approbation of New-York, even against her will, in a pursuit which those citizens alone of New-York can be engaged in, who are licensed by that State to which they owe their allegiance—a right by which the emissaries of a foreign State, armed with the commission of their sovereign, are exempted from the operation of the laws of that State in whose confines they execute the duties of their office; are unrestrained by the salutary regulations established in pursuance of such laws, and rendered amenable alone (if it all) for misconduct, to that State whose sovereignty they represent, and from which they derive their official existence. Is this consistent with State rights and State sovereignty, or does it not more strongly savor of consolidation? If this blending of jurisdiction is compatible with sovereignty, that boasted independence is but a theory.

It has been well said that the act of 1837 "has occasioned serious difficulties in the operation of the pilot system of the United States, and brought about a collision of jurisdiction, first between the United States and the States respectively, and next between States bordering on each other, and bounded by navigable waters, as specified in the law. The collision of jurisdiction between the United States and the States, is rather prospective in its practical operation;

but it is a collision, in principle, on the threshold. It compels one State to admit and tolerate, within its own jurisdiction, the action and functions of a municipal license issuing from another State. It authorizes one sovereign State to invade, in this manner, the waters, territories, and jurisdiction of another. The assumption of this authority by Congress will, we think, be allowed to be a collision of jurisdiction between the United States and the States. It carries violence on the face of it. It requires the authorities of New-York (State and city,) to recognize pilots acting under commissions from the State of New-Jersey, and to admit them on a footing of equality with their own pilots, within their own jurisdiction. The consequence already is, that the State of New-Jersey, having little navigation, issues commissions or licenses to pilots, not so much because the State needs their services, as because these pilots need the profits of employment under the jurisdiction of New-York. New-York having a vast interest at stake, has found it necessary to enact an extended code of pilot regulations, prescribing apprenticeship, qualifications, &c., all which are disturbed, trampled on, and may be rendered of no effect, by enforcing upon them New-Jersey pilots, acting under New-Jersey authorities.

The principle, as will be seen, is precisely the same as if Congress had passed a law to enforce every State to give full credit and scope of action to commissions or licenses issued by any other State; such, for example, as lawyers', doctors', tavern-keepers', pedlars', or any other licenses usually derived from municipal authorities. Was it ever supposed that Congress had this power?

The power granted to Congress by the Constitution "to regulate commerce among the several States," is a very different thing from a power to impose the municipal authorities of one State upon those of another, as is the effect of the law of Congress now under consideration. This is the single principle, the exact shape and definite action of this law, viz: to enforce the authorities of one State on those of another—a principle, as cannot be denied, of disorganization and aggression.

"Congress shall have power to regulate commerce between the States," etc. The fair interpretation of a law is a reasonable one. One of the first and fundamental principles of our state of society is the sovereignty of the States within their own jurisdiction, as to "all powers not delegated to the United States by the Constitution, or prohibited by it to the States;" and the question now before us is, whether this power "to regulate commerce between the States" would authorize this law of 1837? We think not—first, because the jurisdiction assumed is personal as to the subject of it, and therefore municipal. It is the government of the agent of commerce, which lies in the jurisdiction of a State, and does not affect the terms or conditions on which the material of commerce shall pass from one State to another. By this law the State of New-Jersey may and does push its jurisdiction over persons into the State of New-York, and compels the latter to admit such jurisdiction by surrendering its own, so

far as the regulation of the personal conduct of pilots is concerned in their professional capacity, and as to the terms of qualification.

"To regulate commerce between the States"—to prevent one State from embarrassing or impeding the commerce of another; to prescribe, if necessary, the terms on which the material of commerce shall pass from one State to or through another; to equalize the terms of commercial intercourse; to maintain the obligation of contracts throughout the Union; to provide a standard of common currency, etc., but it would be preposterous to suppose that this power was intended to authorize Congress to compel the State of Georgia to recognize a pedlar's license obtained from the municipal authorities of South Carolina, or to surrender jurisdiction over a stage driver's functions because he happened to take up his whip in a neighboring State. Peddling on wheels or on foot is commerce, doubtless, as much so as shipping; but we apprehend that a nullification temper would be extremely prone to rise, if Congress should attempt to force a pedlar's license, granted by one State, upon another. The pilot is a pedlar—that is, he is the agent of a peddling voyage, and carries in his pocket a municipal commission which is the warrant of his occupation, as much as the driver of a pedlar's wagon. We believe it will be admitted as sound doctrine, that when a man passes from one State to another, his personal accountability is transferred to the latter. He cannot be amenable to both jurisdictions at the same time and for the same acts. The reason is, because the laws of the State left behind cannot follow or reach him—cannot lap over. Even if he is a criminal flying from justice, he cannot be overtaken by the authorities he has violated; but they are compelled to resort to another power, provided by the federal compact. Jurisdiction is sacred, and it is absurd to suppose that the law of one State may prescribe the terms and modes of personal acts or functions performed in another State. The professional functions of pilots are purely personal acts."

It is conceded that an *officer or agent of the United States must be admitted* and entertained by the States in the discharge of his appropriate functions, and that for these duties he comes under the jurisdiction of the authority from which he derives his commission. For all such purposes, the jurisdiction of the United States comprehends all the States. But it will be seen that the entrance of a commission or license *of the Federal* Government into the jurisdiction of the States for such purposes, is a very different thing from the entrance and action of a commission or license of any one of the States into the territories of another. We are not aware that such a thing can possibly be, in any propriety, or by any known right; and yet this is precisely the case authorized by this law of Congress. Nor would it be sufficient to say that the New-Jersey pilot enters the waters of New-York as an agent of the Federal Government, because it is not a fact. He is an agent of the State of New-Jersey, so far as the immediate derivation of his authority is concerned, which, we conceive, is all we have to consider. A commission or license of New-Jersey is forced upon the State of New-York.

If Congress had assumed jurisdiction over pilots in toto, made the necessary regulations, and ordained their licenses to issue immediately from federal authorities, this collision of State jurisdiction would have been avoided.

Admitting that Congress had original jurisdiction in the case, yet the jurisdiction was in the state of a non-user ; was vacated so far as the action of the Federal Government is concerned ; was conceded, indeed, and sanctioned by the formal acts of this government, in favor of the States ; and there never was a symptom that Congress intended to assume it till 1837, when it was suddenly, and we may add, violently taken, without even the courtesy of a notice served on the parties concerned. The pilot regulations formed a part, in some States a large part, of the municipal code of those which had ports ; and the State of New-York, at the very moment of the passage of this law of Congress, in 1837, was revising its own laws on this subject, and in just thirty-nine days thereafter adopted a new code, consisting of two acts and fifty-two sections, many of those sections being chapters in themselves, the authority and effect of which was destroyed by this act of Congress, so far as the scope of the latter extends ! Is not this a most remarkable collision of jurisdiction ? It was doubtless proper, and was naturally to be expected, in view of the history of the past, if Congress meditated such an assumption—we will not say usurpation—of power—although it cannot be called re-sumption, for they had never before used it—it was proper, we say, that a notice of such purpose should have been served on the States, and that time should have been allowed the State authorities to accommodate their own position to this new position of the Federal Government, so seriously, extensively, and vitally affecting themselves. We say vitally, for it is impossible not to feel that it is an invasion of State sovereignty. But it affected their convenience and paralyzed the arm of their authority, besides leaving them open to privateering incursions from neighboring States, acting under commission of those States, with the authority of the United States to back them.

The design of the act of 1837 was to break up what was averred to be a combination among the pilots of New-York, impairing the fidelity and usefulness of the service, by letting in upon them the pilots of New-Jersey, with a view of introducing a fair and salutary competition.

It appears that the supreme legislative authority of the State of New-York, in the right of its own sovereignty, in the good faith of the act of Congress of 1798, and in accordance with all usage in these United States, took upon itself to revise and amend the laws of the State for the regulation of pilots, in consequence of the public excitement respecting the loss of the Bristol and Mexico, and simultaneously with the action of Congress on the same subject, for the same object. It is evident, from an examination of the law of New-York, that no pains or expense were spared to obtain all information that could be of use, and that the committee charged with the duty of reporting a bill, performed their task with great fidelity. Two separate acts were prepared, one of forty-four, and the other of eight sections,

in all fifty-two, altogether of such extent and particularity as to constitute a proper pilot code. The twenty-third section of the first act strikes at the principle of combination complained of as the great evil, and is a full and sufficient remedy, if faithfully administered by the board of commissioners. It is as follows :

"The earnings of the pilots belonging to any one boat shall be equally divided among the pilots of said boat ; and no pilot shall participate, unless authorized by the commissioners, in the earnings of any others than those attached to the same boat ; and for breach of this provision, any pilot or pilots shall forfeit his or their license or licenses."

By this section, and others provided for its proper execution, every pilot boat has a separate interest, is barred from combination by heavy penalties, and forced into competition with all other boats.

As a matter of fact, however, we have the published testimony of the board of commissioners that no such combination among the New-York pilots has existed "for several years past." Moreover, they say "that the competition existing among the New-York pilots is equally, if not more strenuous, than that existing between them and the New-Jersey pilots. We know this to be the fact from the report-books of the last three year's standing, and from every day's observation. We have before us reports made by them (the pilot boats) against each other, for infringements made on each other's rights, which of course we have to adjust. The date of this evidence is 1840. The commissioners also certify that whatever reform has been effected "has been the result solely of the State law of 1837," meaning to the exclusion of the influence of the law of Congress.

The understanding established by the act of Congress of 1798, between the Federal Government and the States, upon this subject, was the result of experience and the dictate of good sense. In the first place, it appears to have been seen and admitted—that is the natural inference from the transaction—that the regulations of the pilots within the bounds of the States, is properly and necessarily a part of State jurisdiction. Next, as it was a matter of great importance that it should be attended to, this act of Congress, of 1798, may properly be viewed in the light of a declaration on the part of Congress, as to the right of sovereignty in this particular, and a full concession thereof to the States ; and on the part of the States a tacit pledge, and therefore, an understanding or covenant, that they, the States, would faithfully perform this part of their duty. They had done it before, and they have done it ever since. It was a usage of more than half a century, never challenged, and was solemnly ratified in 1798, by the very party, to wit, Congress, which broke in upon it, and disturbed, not to say violated it, by the act of 1837.

It is evident, that the States only are competent to attend to this business, not to touch the question of right. Look at the two acts of New-York in 1837, and to the act of Congress of the same year. The former is an extended and able pilot code, providing for all the necessities of the service, as suggested by the whole history of New-York navigation. It creates a branch of municipal polity of great

dignity and consequence, well adapted to its purposes. It shows that all concerned in it, understood the subject, and commendably discharged their duty. Whereas the contemporaneous law of Congress evinces, not only a want of consideration, but great ignorance of the subject. There is but one single, solitary principle in it, and that, most unfortunately, is a principle of mischief—of two-fold, tri-fold, manifold mischief—a naked principle of aggression in the first stage, giving birth to and authorizing nothing but aggression in all other of its stages and forms. The moment this law came to operate in the State of New-York, or in any other State, it struck at the sovereignty of that State, suspended its authority as to the matter in question, and forced upon its jurisdiction the action and use of a commission or license (municipal) of a foreign State. It is, moreover, a violation of the pledged faith of Congress—a faith as solemnly pledged as in any part or parcel of the Federal Constitution, and is a matter of record in the journals of that body, and incorporated with its laws. We venture to suggest, that such a hasty act, we are disposed to say, error of legislation—for such it evidently was—is not to be found in our annals. We are confident it cannot be persisted in by Congress, after mature reflection. Are they prepared to say to this country, that they will sustain such a wanton invasion of State rights? We say wanton, for what possible good can result from it? There is positively nothing but evil, without considering the breach of faith, and the collision of jurisdiction. The regulation of the pilots of our waters, must be either in the care of the United States or of the States.

The jurisdiction cannot possibly, certainly not, conveniently, be divided. We think it cannot possibly. It must be entire in one case or the other. The State of New-York has evinced its fitness and competency, by its elaborate and well adapted laws of 1837; whereas Congress has laid down but a single rule, and that a disorganizing one.

But we think it certain, that the States will not submit to this assumption of power over their heads, in violation of immemorial usage, and of compact. It is a perfect novelty, an unheard of event, that a municipal commission or license of one State should be forced, with all its powers and privileges, upon the jurisdiction of another State, to suspend and nullify the authority of that State! And yet this is the naked principle, as well as the sum and substance of the law of Congress of 1837. It contains nothing more, and nothing less. There is nothing but mischief, portentous mischief, in the act.

In the same manner as lawyers, doctors, and other professions, obtain licenses to practice, under the municipal regulations of their respective States, granting them peculiar and exclusive privileges, as a compensation for the expenses of their education and their devotion, thus qualified to callings having in charge, professionally, the welfare, fortunes and lives of the community; so also the pilots of our ports and harbors, having qualified themselves by a long course of training and at great expense, are licensed by municipal authorities, and are endowed thereby with certain exclusive privileges, in the use of which their services are intimately connected with the wealth, happiness,

and lives of the community. It is scarcely possible to name a more important function, in the ordinary walks of life, than that of pilots. They have constantly in charge immense wealth and many lives of our citizens. Nor can they transfer the use of their talents and acquirments to another place, or to another State, if they are injured. A pilot of New-Orleans might as well go to the moon, as to New-York or Boston, and vice versa; for he is only qualified to act where he is acquainted with the pilot grounds. His talents are of no use to him any where else.

Besides, it is to be considered, that the public authorities never call a lawyer to account for losing his case, or a doctor for losing his patient, unless there is suspicion of crime; whereas, a pilot is liable to penalties for every loss of property and life under his charge, and is obliged to give bonds. Other professions are rarely limited by law in their charges; but pilots always are. The rules of the service are many and strict, and the vigilance of authority great, because great interests are at stake. The pilots of every port have grown up under their own system, and are compelled to rely upon the uniform maintenance of that system for their own livelihood, and that of their dependent families. Whereas, this new law of Congress, of 1837, takes them by surprise, invades their rights, takes away the small profits of their profession, and blasts their prospects of living. They are entirely powerless, and are compelled, unresistingly and unjustly, to submit to the incursions of foreigners, acting under the commission or license of foreign States, thus enforced by the supreme authority of the nation, to take away the earnings and bread of those who had consecrated their lives to this service for the sake of the pledged benefit. These invaders of right, having never served an apprenticeship, nor conformed to the rules of qualification, as established by the municipal authority of the jurisdiction thus entered, are enabled by act of Congress, to jump over these laws, set them at defiance, and can afford so to underbid the lawful tenants of the ground, as to expel them even from competition—as to expel them altogether; and the next thing will be a combination of foreigners, under foreign licenses, in possession of the pilot grounds of New-York. This will be the inevitable result. The service must necessarily be depreciated in its character, and all the experience of the local authorities lost, in the loss of their power of control. The evil is immense. It is not only a great injustice, but there is a public and authoritative sanction given to the spirit and to acts of disorganization, and great wealth and many lives are put in jeopardy.

Next, we have the testimony of the board of commissioners put over the pilots of New-York city. They state, first, that the new law of that State has proved effectual for purposes of reform, so far as it was required. Next, to the point and fact of competition between the pilots of New-York; and, lastly, a very touching certificate to the excellence of their character, and to the fidelity of their service.

"A more valuable, capable, deserving and enterprising class of pilots, the world does not produce; they almost daily board vessels at

sea, from fifteen to fifty, one hundred and fifty, and two hundred miles from the Hook; and in some instances, they go up to Nantucket and St. George's Bank. It is heart-rending to see these invaders of our State rights, board vessels along side the dock, and carry them to sea, to the exclusion of our pilots who have served a regular apprenticeship, and who have such an immense capital afloat. If they have for once erred, they have been sufficiently punished for it, and have made ample atonement by their unexceptionable conduct, and a probation of nearly four years. The General Government, as well as the State, may be assured that they need be under no apprehension of neglect of duty among them," &c.

And this testimony from the commissioners appointed by the State, to see that the pilot regulations of New-York are observed and executed:

"This board," they say themselves, "is composed of men who have sailed from this port as long, if not longer, than most men who have made the sea their profession; and we have found, from our experience of from thirty to thirty-five years, that we were never at a loss for a pilot, except when a great influx of arrivals took place and the pilots were all engaged, which has some years past been the case, and caused a small detention. Since that, the defect has been remedied by an increase in the number of pilots; which increase has been such, and shortly will be greater, by the expiration of the indentures of apprentices, that they will scarcely be able to pay expenses. This board would, as a matter of impartial justice, beg of Congress either to cause a repeal of the laws which do now allow the Jersey pilots to pilot in our waters, or place them under the same restrictions as those to which our pilots are subjected.

"The State of New-Jersey having so little commerce, found no occasion for legislating on the subject of pilots, till this act of Congress of 1837, and then her object could not be legitimate as a moral question, because it was only to depredate on the rights of her neighbors, New-York, Pennsylvania and Delaware. Immediately, men could come from Rhode-Island, Connecticut, from the west, from any where, from foreign ports even, and take out licenses for piloting from the New-Jersey authorities, however slender their qualifications, and be entitled to all the privileges of New-York pilots.

"The State of Mississippi only waited to see if the operations of New-Jersey, under the act of Congress, would be tolerated, and out came her act, in February, 1840, to license forty pilots to act in the mouths and passes of the Mississippi. She even went to Congress with petitions for an alteration or extension of the law, to be the more secure of her end. Next, perhaps, we shall hear of a State having no navigable border, taking her men from the plough to pilot the shipping of our ports.

"The city of New-York is already supplied with nearly a hundred pilots of her own, regularly trained and well qualified, who have a capital of $100,000 afloat in their boats—a property which, on account of the perils to which it is exposed, cannot be insured at any

rate which the pilots are able to afford. Neither are those boats fit for any other service, any more than their masters."

Let us now further examine the practical effect of the act of 1837; to do so, a reference to the boundaries of this State, and its territorial jurisdiction and the pilot laws since 1731, becomes necessary to ascertain the extent of her limits, and the jurisdiction which has ever been claimed for her, in regard to pilot regulations. Before the compact between the States of New-York and New Jersey, respecting their territorial limits and jurisdiction, ratified by the act of Congress of June 28, 1834, the boundary of New-York on New-Jersey was as follows: from a "rock on the west side of the Hudson river, in the latitude of forty-one degrees north, marked by said commissioners; thence southerly along the *west shore at low-water mark* of the Hudson river, of the Kill Van Kull, of the sound between Staten-Island and New-Jersey, and of Raritan bay to Sandy-Hook." Before the compact of 1834, the boundary of New-York extended to low-water mark throughout its border on the State of New-Jersey. The compact of 1834 does not vary that boundary to affect this subject.

"*Article 1st.* The boundary line between the two States of New-York and New-Jersey, from a point in the middle of Hudson river, opposite the point on the west shore thereof, in the 41st degree of north latitude, as heretofore ascertained and marked, to the main sea, shall be the middle of the said river, of the bay of New-York, of the waters between Staten Island and New-Jersey, and of Raritan bay to the main sea, except as is hereafter otherwise particularly mentioned.

"*Article 2d.* The State of New-York shall retain its present jurisdiction over Bedlow's Island, Ellis Island, and shall also retain exclusive jurisdiction of and over the other islands lying in the waters above mentioned and now under the jurisdiction of that State.

"*Article 3d.* The State of New-York shall have and enjoy exclusive jurisdiction of and over all the waters of the bay of New-York, and of and over all the waters of the Hudson river lying west of Manhattan Island, and to the south of the mouth of Spuytenduyvil creek, and of and over the land covered by the said waters, to the low-water mark on the westerly or New-Jersey side thereof, subject to the following rights of property and of jurisdiction of the State of New-Jersey, that is to say—

"1st. The State of New-Jersey shall have the exclusive *right of property in and to the land under water* lying west of the middle of the bay of New-York, and west of the middle of that part of Hudson river which lies between Manhattan Island and New-Jersey.

"2d. The State of New-Jersey shall have exclusive jurisdiction of and over the wharves, docks and improvements made and to be made on the shore of said State, and of and over all vessels *aground* on said shore, or *fastened* to any such wharf or dock, except that the said vessels shall be subject to the quarantine or health laws and laws in relation to passengers of the State of New-York, which now exist or which may hereafter be passed.

"3d. The State of New Jersey shall have the exclusive right of re-

gulating the fisheries on the westerly side of the middle of the said waters, provided that the navigation be not obstructed or hindered."

The other provisions of the compact relating to the division of jurisdiction and right of property of the Kill Van Kull, the sound between Staten-Island and New-Jersey, lying west of Woodbridge Creek and the Raritan bay, need not be transcribed, as they are not invoked in the consideration of this question.

From the portions quoted from the compact, the jurisdiction and property is thus distributed :

The State of New-York has exclusive jurisdiction over the *waters* of the bay of New York, of the Hudson river, west of Manhattan Island, and over the *lands covered by water*, to the low water mark on the New-Jersey shore, and over Bedlow's and other islands mentioned.

New-Jersey has the exclusive right of *property* in the *land under water*, west of the middle of the bay of New-York, and west of the middle of the Hudson river, opposite Manhattan Island. That State has also exclusive jurisdiction of the wharves, &c., &c., on the shore of that State, and over vessels *aground* on her shores, or *fastened to her wharves*, subject to the health and passenger laws of New-York, and has also the right of *regulating the fisheries* on the westerly side of the middle of the waters of New-York bay and Hudson river, opposite Manhattan Island.

In other words, New-Jersey has no jurisdiction over the *waters* of New-York bay, or Hudson river, opposite Manhattan Island, except those flowing *above low-water mark on Jersey shore*, but all that jurisdiction is *exclusively* vested in the State of New-York.

The right has been claimed for New-York and maintained, to legislate exclusively on the subject of pilots, as far back as the year 1694. The act of the colonial assembly of New-York, found in Livingston and Smith's laws, passed in 1731, provides for the appointment of pilots. The first section is as follows : " That all and every person nominated and appointed by the president or the governor, &c., &c., by and with the advice and consent of his majesty's council for the colony, to be pilot or pilots between Sandy-Hook and New-York, shall be the pilot or pilots from the port of New-York to Sandy-Hook, and from Sandy-Hook to the port of New-York, and to and from these places.

The sixth section provides that if any person or persons, not appointed in the manner before mentioned or deputed by those so authorized as aforesaid, *shall presume* to take upon him or them to pilot any ship or vessel going into or coming out of the said port of New-York, shall forfeit and pay the sum of £3. The first section of 32 George II. passed March 7th, 1759, contains the same prohibition, under the increased penalty of £5.

The statute of February 19th, 1819, in the 22d section, maintains the same exclusive jurisdiction. It is as follows : " That the branch pilots, the deputy pilots, &c., &c., shall be the *only* persons employed in the pilot service, to and from the port of New-York, by the way of Sandy-Hook." So the 9th section of the statute of 12th April,

1837, *enacted in the face of the act of Congress of 4th March of the same year* declares, that "any person *not holding a license as pilot*, who shall pilot or offer to pilot any ship or vessel to or from the port of New-York by the way of Sandy-Hook, shall be deemed guilty of a *misdemeanor*, and on conviction thereof be punished by a *fine*, not exceeding fifty dollars, or *imprisonment*, not exceeding one month: but no such penalty shall be incurred by piloting or offering to pilot any vessel which shall have been in sight of Sandy-Hook, with the usual signal for a pilot, and shall have waited two hours without one having offered; nor shall this section apply to the captain or master belonging to any vessel acting as pilot thereof by virtue of this act."

The expression "*not holding a license as pilot*," manifestly refers to the license granted in pursuance of the laws of this State; and the law of 12th of April, 1837, is *palpably* in collision with the act of Congress authorizing others than those holding such license, to pilot vessels to or from the port of New-York by the way of Sandy-Hook; consequently, if the act of Congress is constitutional, the statute of New-York is a dead letter, under the 6th article of the Federal Constitution. Was it becoming the dignity of this State that her Legislature should, *advisedly*, pass a law that was without force or effect, and is it not the paramount obligation of the State to vindicate that law, in the assertion of her sovereign rights?—a law only to be sustained by overthrowing the conflicting legislation of Congress, and establishing its unconstitutionality.

The legislation by New-York has always been exclusive and co-extensive with the jurisdiction over her waters, until February 8th, 1837, when the State of New-Jersey passed a law, the preamble of which is as follows: "That whereas the commerce of New-Jersey requires every facility and aid usually extended to maritime States, *and whereas at this time there are no licensed pilots* for the safe conduct of our *increasing commerce*, rendering us wholly dependent upon a neighboring State, Therefore, &c., &c." In truth that act was passed that it might be adopted by Congress, as it was, within the short period of twenty-four days, more for the purpose of giving employment to the citizens of New-Jersey, *within the jurisdiction of New-York*, than on account of her *increasing* commerce; and we now find New-Jersey pilots navigating vessels (not under any pretence of jurisdiction over the waters from that State to the high seas,) through the narrows, to and from sea; through the East river, to and from Corlear's Hook and the Navy-Yard, Brooklyn; they even take them from the slips and wharves of the city of New-York, at the extreme points of that city, whether in the East or Hudson rivers; they also leave them at quarantine, and take them thence. How, it is asked, can it be said that the port of Tompkinsville, at quarantine, is a port "situate upon waters which are the boundary between two States?"

The act of 1837 uses the term "*port*," not port of *entry*, and it is well known that the court of admiralty recognizes Tompkinsville, Williamsburgh, Sing-Sing, Newburgh and other small places, as *ports*, and has frequently so held under the admiralty jurisdiction of the lien

law of material men of this State, equally with the port of New-York.

Can this claim of New-Jersey be justified on the ground that these waters are a common highway ? that the right of navigation belongs to every citizen of the United States ? True, it is a highway ; but it is equally true that the control and regulation of a highway, *within the body of a State*, is the province and prerogative of the sovereignty through which it passes ; nor is that *regulation* incompatible with the *free enjoyment* of such highway. Every vessel on waters within the territory of a sovereign State, is subjected to the municipal regulations of that State. It might with equal propriety be claimed, that because the streets of the city of New-York are common highways, the State of New-Jersey has the right to issue licenses to her citizens as drivers of hackney-coaches. The right of enjoying the highway for the purposes of navigation is far different from the exercise of municipal authority over such highway ; nor can such municipal authority be exercised conjointly by two States, especially at this port.

The quarantine or health laws of New-York form an important part of her legislation ; the importance of it to the welfare of her citizens and the prosperity of the State is too well known to need comment. In the execution of those laws the aid of her pilots is constantly *demanded*, under severe penalties, in hailing vessels approaching her ports, and admonishing them of the requirements of those laws. How stands the collision of jurisdiction on this subject ? What right has this State to impose upon the pilots of New-Jersey the performance of the same duties, which are enjoined in every statute, to be observed by her own pilots ? Congress has not confided to New-York jurisdiction over the pilots of New-Jersey. There is no guarantee that New-Jersey may find it proper or expedient to notice this measure of precaution ; *it is not now a duty in her present statute*, establishing a pilot system. This is the practical effect of the act of Congress.

It is repeated, that Congress has the *right* to commit this wrong directly, by appointing her own officers, as a regulation of commerce, but may not indirectly, by merging the jurisdiction of both States in each other.

The municipal jurisdiction of the State of New-Jersey thus exercised, is entirely repugnant to the second title of the Revised Statutes, treating on "the sovereignty and jurisdiction of New-York." That title declares that "the sovereignty of this State extends to all places within the boundaries thereof, &c., &c., but the extent of such jurisdiction over places that have been or may be ceded to the United States, shall be qualified by the terms of such cession." The second section declares that "it shall be the duty of her Governor and of all subordinate officers of this State to maintain its sovereignty and jurisdiction."

It is, in conclusion, respectfully submitted that Congress has authorized an invasion of the sovereignty of New-York by New-Jersey, through hasty and ill-advised legislation. It is an usurpation of authority not to be submitted to—inconsistent with the dignity of the State—and, if acquiesced in, may soon be followed by other, and, if

possible, more flagrant encroachments. The laws of this State have jealously guarded her integrity, in making it the duty of her officers "to maintain and defend its sovereignty and jurisdiction." As citizens of the State, we claim to be protected in our rights thus trampled under foot, and confidently hope that measures may be taken to secure to us the uninterrupted enjoyment of our franchise, and effectually to check the pretensions of a neighboring State, sustained though she be by the sanction of Congress. In vain have we sought redress at the hands of those who inflicted the wrong, but now confidently believe that the subject is so presented as to require the vindication of the supremacy of the State, and involves a more serious question than the protection of the humble pilot. Establish our rights, and our duty will follow; but "misera servitus est, ubi jus est vagum ant incognitum."

Respectfully submitted.

PETITION

Of the Pilots of New-York, by way of Sandy-Hook.

TO THE LEGISLATURE OF THE STATE OF NEW-YORK

The Memorial of the Pilots of the Port of New-York, by the way of Sandy-Hook,

Respectfully Represents:

That they have been duly licensed in pursuance of the provisions of the laws of this State, to pilot vessels to and from the port of New-York, by the way of Sandy-Hook.

That in faith of the protection of those laws, they have embarked their fortunes in the purchase, building, and equipment of pilot boats necessary and proper to the efficient and useful discharge of the appropriate duties of their office.

That on the 4th of March, 1837, Congress passed an act entitled "An act concerning pilots" in the following words: "Be it enacted that it shall and may be lawful for the master and commander of any vessel coming into or going out of any port situate upon waters which are the boundary between two States, to employ any pilot duly licensed or authorized by the laws of either of the States bounded on the said waters to pilot any vessel to or from said port; any law, usage or custom to the contrary notwithstanding."

And your memorialists further show that under and by virtue of the said act, and under and by virtue of an act of the State of New-Jersey entitled "An act to establish and regulate pilots for the ports of Jersey city, Newark, and Perth Amboy, by the way of Sandy-Hook," passed the 8th of February, 1837, and under and by virtue of a supplemental act of the State of New-Jersey, passed the 13th of February, 1838, the pilots licensed and commissioned by the State of New-Jersey, have been, and now are engaged, in piloting vessels to and from the city of New-York, and the city of Brooklyn, and Tomp-

kinsville in the county of Richmond, by the way of Sandy-Hook, on waters within the exclusive territorial jurisdiction of the State of New-York.

And your memorialists further show that such actings and doings of the pilots of New-Jersey are in absolute derogation of the rights and interests of your memorialists, guarantied to them by the laws of the State of New-York, and in manifest violation of the sovereignty of the State of New-York, inasmuch as the said act of Congress sanctions and authorizes the municipal authorities of the State of New-Jersey to exercise the sovereign power and authority of that State within the territorial confines of the State of New-York.

Your memorialists therefore humbly pray that your honorable body will adopt such measures as may seem meet and proper to try and determine whether the aforesaid act of Congress does or does not transcend the legislative power of the Federal Government, and whether the acts exercised under its sanction, and under the authority of the laws of the State of New-Jersey by the citizens of that State, are or are not in violation of the sovereignty of the State of New-York, and in contempt of her laws.

And your memorialists will ever pray, &c. &c.

James Burger,	Richard Blake,
John T. Kelso,	J. Livingston,
John Hyer,	Thomas Vail,
Jno. Maginn,	Henry J. Bullinger,
John Martino,	Isaac S. Vanderbilt,
Jarvis P. Cahert,	Stephen Martino,
Corns. Hope, Jr.	Henry M. Wheeler,
John Henderson,	John Fredell,
James H. Smith,	Wm. P. Turnure,
Robt. W. Johnson,	Josiah Johnson,
John L. Turnure,	Maurice D. Weaver,
Kuyler E. H. Dibble,	John Dean.

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